

Introduced by _____

First Reading _____

Second Reading _____

Ordinance No. _____

Council Bill No. B 94-08

AN ORDINANCE

authorizing the City Manager to execute an agreement with Sustainable Farms & Communities, Inc. for an option to lease city-owned property located at the intersection of Ash Street and Clinkscates Road for the operation of a farmers' market; and fixing the time when this ordinance shall become effective.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The City Manager is hereby authorized to execute an agreement with Sustainable Farms & Communities, Inc. for an option to lease city-owned property located at the intersection of Ash Street and Clinkscates Road for the operation of a farmers' market. The form and content of the agreement shall be substantially as set forth in "Attachment A" attached hereto and made a part hereof as fully as if set forth herein verbatim.

SECTION 2. This ordinance shall be in full force and effect from and after its passage.

PASSED this _____ day of _____, 2008.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor

OPTION TO LEASE REAL PROPERTY

This OPTION TO LEASE REAL PROPERTY is entered into on this _____ day of _____, 2008, by and between the City of Columbia, Missouri, a municipal corporation, ("Lessor") and Sustainable Farms & Communities, Inc. (Lessee).

Lessor and Lessee agree as follows:

1. This option is subject to the terms and conditions contained in the Memorandum of Understanding entered into and among Lessor and Lessee executed on June 11, 2007.
2. Lessor grants Lessee an option to lease the following described property:

A tract of land as shown on the attached drawing measuring approximately 250 feet by 554 feet and totaling 116,265 square feet (2.6 acres, more or less), of a 19 acre parcel currently owned by the City and located at the intersection of Ash and Clinkscales streets in the west central part of the City, as shown in "Exhibit A" attached hereto and made a part hereof as fully as if set forth herein verbatim.

subject to the following terms and conditions:

- (a) Within two hundred ten (210) days of execution of this option, Lessee agrees to obtain at its expense a survey of the leased premises and a more complete legal description of the property.
 - (b) The term of the lease shall be such that the lease will expire five (5) years after the expiration of any tax credits approved for the construction of a Farmers' Market Community Center.
 - (c) Rental shall be Two Thousand one Hundred Dollars (\$2,100.00) per year. Annual payments shall be paid upon execution of the lease and the anniversary dates thereof.
 - (d) Upon receipt of the survey and legal description of the premises, a formal lease will be drafted.
3. Lessor and Lessee agree that the purpose of this option to lease is to enable Lessee to obtain tax credits through the Neighborhood Assistance Program of the Missouri Department of Economic Development. The parties agree that if Lessee's application for tax credits is denied or should Lessee fail to apply for the credits within two hundred ten (210) days of the execution of this option to lease, the option shall be null and void and shall have no effect.
4. Lessor and Lessee agree that the executed lease shall clearly define the allowable uses of the Farmers' Market Community Center. Lessor shall have the right to use

the Center at times when it is not actively programmed for Farmers' Market activities.

Such use by the Lessor may include programming a variety of publicly oriented activities such as picnics, reunions, concerts, recreation programs, and other community events. Lessor's use shall not exceed fifty percent (50%) of the total hours of available use of the facility.

IN WITNESS WHEREOF, the parties hereto have been duly authorized to execute this Option to Lease Real Property as of the day and year first above written.

LESSOR:
THE CITY OF COLUMBIA, MISSOURI

By: _____
H. William Watkins, City Manager

ATTEST:

Sheela Amin, City Clerk

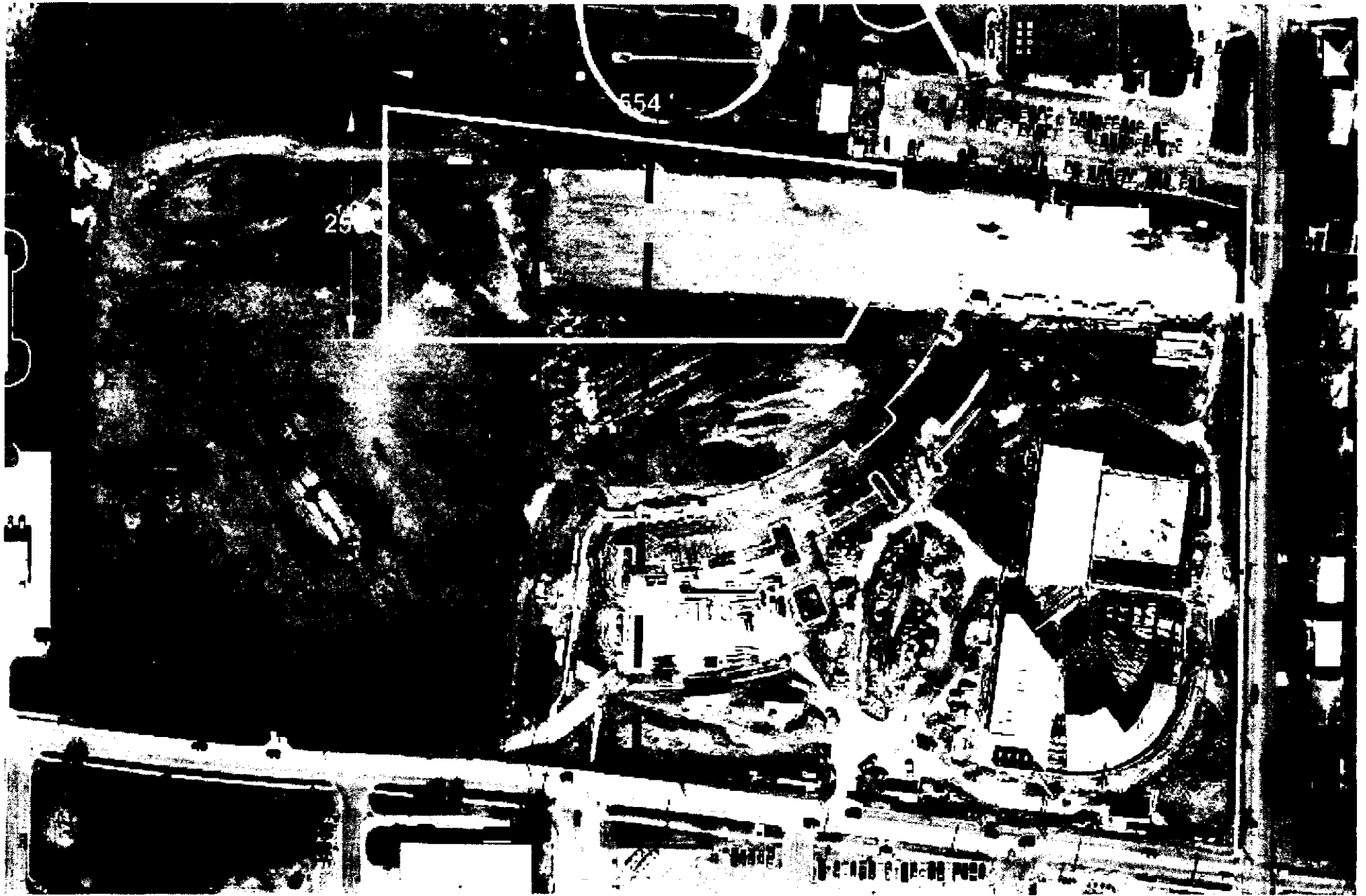
APPROVED AS TO FORM:

Fred Boeckmann, City Counselor

LESSEE:
SUSTAINABLE FARMS & COMMUNITIES, INC.


By: _____


ATTEST:



Proposed Farmers' Market Use Area

Source

Mike Hood 
Parks and Recreation

TO: City Council
FROM: City Manager and Staff 
DATE: March 27, 2008
RE: Columbia Farmer's Market - Option To Lease City Property

Fiscal Impact

YES x

NO

Other Info.

Summary: At the March 17th City Council meeting, the Council reviewed a request from Sustainable Farms and Communities to modify the existing memorandum of understanding with the City to allow them to seek tax credits in support of their fund raising campaign to build a permanent facility to house the Columbia Farmer's Market (see attached report). Staff recommended that the City provide Sustainable Farms with an "option to lease" City property at Ash and Clinkscals. Such an option would allow Sustainable Farms to apply for the tax credits. If the tax credits are approved, the City would be committed to entering into a long term lease (minimum of five years beyond the expiration date of the tax credits) of the property. If the credits are not approved, then the existing memorandum of understanding would remain in effect.

Council concurred with staff's recommendation and instructed staff to bring back an ordinance authorizing the option to lease the Ash and Clinkscals property. This ordinance, if approved, would authorize the City Manager to sign the option on behalf of the City.

Discussion: As drafted the proposed "option to lease" would commit the City to providing Sustainable Farms and Communities a long term lease of approximately 2.6 acres (see attached drawing) of City owned property at Ash and Clinkscals. The 2.6 acres is slightly larger than the paved area currently used by the Farmer's Market and would allow some flexibility in the future design of the permanent facility. It should be recognized that the leased area may have to be adjusted at some point in the future when fund raising is complete and final construction plans are prepared and approved by the Council.

Under the terms of the option to lease:

1.) Sustainable Farms must obtain a property boundary survey and prepare a legal description of the area to be leased within 210 days of the execution of the option.

2.) The term of the actual lease will expire five years after the expiration of any tax credits approved for the project.

3.) Rent shall be \$2,100 per year which is the amount currently being paid to the City under the Market's annual lease of the property.

4.) If no tax credits are approved for the project or if Sustainable Farms fails to apply for such credits within 210 days, then the option is null and void.

5.) Both parties agree that the City shall have the right to use the market facility at times when it is not being programmed for Farmer's Market activities. To confirm that the "option" qualifies under the terms of the State's tax credit program, the option specifies the City's use will not exceed 50% of the total hours of available use of the facility.

Suggested Council Action: Approve the ordinance authorizing the City Manager to sign the proposed option to lease approximately 2.6 acres of City owned property to Sustainable Farms and Communities to serve as the future site of a permanent Farmer's Market Community Center

Source

Mike Hood *MH*

Parks and Recreation

TO: City Council
FROM: City Manager and Staff
DATE: March 7, 2008
RE: Columbia Farmer's Market - Proposed "Option to Lease" Property

Fiscal Impact

YES

NO

Other Info.

Summary: The Columbia Farmer's Market is currently attempting to raise funds to construct a permanent market structure. While having some success, the Market now believes it would be a substantial benefit to their funding campaign if they could qualify their project for Neighborhood Assistance Program (NAP) tax credits from the Missouri Department of Economic Development (see attached letter – attachment A). Under the terms of the existing memorandum of understanding, the market project is not eligible for such tax credits. One alternative which would allow the Market to apply for the credits would be for the City to approve an "option to lease" the targeted property to the Market. If the tax credits are approved, the City would be committed to entering into a long term lease (minimum of seven years) with the Market for the property. If the credits are not approved, then the existing memorandum of understanding would remain in effect.

Discussion: As the City Council is aware, the Columbia Farmer's Market is attempting to raise the necessary funds to build a permanent facility on City property located adjacent to the ARC. A Memorandum of Understanding regarding the project was approved by the Council in the spring of 2007 which outlined some basic guidelines for proceeding with the project.

Staff has met regularly with market representatives since the memorandum was approved. It is staff's understanding that the Market has met with some success in their financial campaign and has to date received donation pledges exceeding \$100,000 (see attachment A). At this point in time, the Market believes it would be a substantial benefit to their funding campaign if they could qualify their project for Neighborhood Assistance Tax (NAP) credits from the Missouri Department of Economic Development (DED). After meeting with DED officials, it is clear that under the current terms of the existing memorandum, the project would not be eligible for such credits. The Market has asked whether the City would be willing to modify the existing agreement in a manner which would allow them to qualify for NAP credits.

Staff, after reviewing the terms and requirements of the tax credit program, believes that one alternative exists which would allow the Market to apply for the tax credits but which would not obligate the City to modify the existing agreement unless the tax credits were officially approved. That alternative would be to provide the Market with a "legal option to lease the City property" (see attached guidelines from DED).

Such an option would commit the City to providing the Market with a long term lease of the property (minimum of five years beyond the fund raising period approved for the tax credits) provided the tax credits are approved. If the tax credits are not approved, then the existing memorandum of understanding would remain in effect.

In January of this year, park staff asked the City's Legal Department to draft a possible "option to lease" document (see attachment C). This draft was provided to Market representatives who in turn asked DED staff to review in order to determine if it would meet their application requirements. DED has completed their review of the draft option and has indicated that with some minor revisions and Council approval, such an "option" would be acceptable. DED asked that revisions be made: 1.) to clearly identify that the term of the lease is for a minimum of five years beyond the expiration of any tax credits approved for the project and 2.) a section be added clarifying the planned use of the structure with regard to both Market and City use. If Council determines that it is appropriate to proceed with the option to lease alternative, such revisions will be made in the final draft of the document.

The Market is hoping to pursue a time frame that would allow them to submit an application for tax credits by May. To meet such a time frame, an ordinance approving an "option to lease" would need to be acted upon during the month of April.

Suggested Council Action: If the Council concurs that it would be appropriate for the Farmer's Market to seek to qualify their project for Department of Economic Development NAP tax credits, staff should be instructed to prepare an ordinance approving an "option to lease" that portion of the City's property located at Ash and Clinkscals Streets which is currently being used by the Market.



Sustainable Farms & Communities, Inc.
FARMERS MARKET COMMUNITY CENTER
 GROWING ~ EDUCATING ~ SUSTAINING

SF&C BOARD November 29, 2007

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 Guy Clark P.O. Box 6015
 vice-chair Columbia, MO 65205-6015

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VOLUNTEER
 COORDINATOR

Victoria Day

Dear Mike,

Thank you so much for meeting with members of the boards of directors of Sustainable Farms & Communities (SF&C) and the Columbia Farmers Market, Inc. (CFM). We have made quite a bit of progress in our capital campaign. We have hired fund raising counsel and a campaign manager. We have received a pace setting pledge from the Heinkel Foundation and a number of significant pledges from members of the community and members of SF&C and CFM. We now have 21 donors to the campaign representing gifts and pledges of approximately \$100,000.

I think we had a fruitful discussion regarding our options for pursuing Neighborhood Assistance Program credits from the Missouri Department of Economic Development. As our relationship is currently structured through the Memo of Understanding (MOU) passed by the City Council we would not be eligible for NAP credits. The issue is one of site control; the Missouri Department of Economic Development requires that recipients of NAP credits have site control for the project period plus five years. We could solve this issue by entering into an executed lease agreement of six years. It could not be a draft document. I believe from our discussions on November 6, that the third option was a more attractive option. To quote:

"3. Legal option to purchase or lease the property from the present owner if the project receives NAP credit approval. The language may stipulate various options depending on the approved tax credit amount. A draft document will not satisfy this requirement."

SF&C & CFM would have to use the space a minimum of 50% of the time to meet further NAP requirements.

We would therefore like to request that the City of Columbia amend the MOU to satisfy the requirements of the Missouri Department of Economic Development for SF&C to apply for NAP credits. We would like a legal option to lease the property from the City of Columbia for a period of six years contingent on SF&C

being awarded NAP credits. That is, if we do not get NAP credits then we do not have to execute the option.

We would very much like to get the language from city staff as soon as is practical with the hopes of showing it to the Missouri Department of Economic Development for examination and approval before it is presented to the Council for approval. Our deadline is pretty tight but as we discussed in the meeting, the end of February is when we would need to have the amended MOU approved by council in time for our March application to the Department for NAP credits.

Thank you and Mike and Gary for your help in this endeavor and in this long process of building a Farmers Market Community Center on the ARC property.

Looking forward to hearing from you.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dan Kuebler", with a long horizontal flourish extending to the right.

Dan Kuebler, Chair
Sustainable Farms & Communities, Inc.

D.E.D. Guidelines - Attachment B

NAP ATTACHMENT D

SITE CONTROL

We understand that our organization must be able to demonstrate that we either presently have control, or will be able to secure control, of the site where our proposed capital campaign project will take place.

Documentation is attached for whichever item is checked below:

- ☐ 1. Evidence that the applicant owns the property (Original title not required).
 - ☐ Mortgage Insurance Statement
 - ☐ Title or Warranty Deed
- ☐ 2. A copy of an executed lease agreement (minimum 6 year agreement). The agreement must include the project period plus five years. A draft document will not satisfy this requirement.
- ☒ 3. ~~Legal option to purchase or lease the property from the present owner if the project receives NAP credit approval. The language may stipulate various options depending on the approved tax credit amount. A draft document will not satisfy this requirement.~~
- ☐ 4. Contingency contract with the current owner stipulating that the property will either be contributed outright or sold to the organization at a discount if, and when, the project receives NAP approval. A draft document will not satisfy this requirement.*

In an effort to assist you, we have provided the following examples of contingency language:

- If the project is approved at the 50% level, the property owner may require a larger cash payment in addition to receiving credits for the discounted amount.*
- If the project is approved at the 70% credit level, the property owner may elect to receive a smaller cash payment, and discount the remainder of the property value in exchange for 70% credits.
- The property owner may require full cash payment for the property, regardless of any amount of credit being offered. If this option is chosen, appraisals are not required by NAP, since the buyer and the seller have the responsibility to negotiate a fair market price for purchase of the property.
- The property owner may choose to donate the property entirely or sell it at a discount without the benefit of the NAP tax credit, claiming only a federal charitable contribution deduction (if allowable).

** If credits are to be awarded on the amount of discount offered by the owner, the value of the property must be based on the lesser of the two qualified independent appraisals (i.e. conducted by state-certified or state-licensed appraisers.)*

Building Usage

☐ Using the space below, please identify any other occupants in the facility and indicate if they are involved in the administration of the project as outlined in the NAP application. If they are not involved in the proposed NAP project, indicate what percentage of the space will be utilized by non-project related activity. The nonprofit organization administering the NAP project must occupy at least 50% of the building space.